

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL No.83 OF 2014

JUDGMENT:

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellants/A1 to A4 have challenged order dated 03.01.2014 passed in Sessions Case No.54 of 2011 by the III Additional Metropolitan Sessions Judge, Hyderabad, whereby the appellants/A1 to A4 are found guilty for the offences punishable under Section 498-A read with 34 IPC and the appellant No.1/A1 found guilty for the offence punishable under Section 302 IPC and accordingly they are convicted under Section 235(2) Cr.P.C. A1 to A4 are sentenced to undergo S.I for two years and also to pay a fine of Rs.10,000/- each, in default, S.I. for one month for the offence punishable under Section 498-A read with 34 IPC. A1 is sentenced to undergo "Life Imprisonment" and also to pay a fine of Rs.2,000/-, in default, S.I for two months for offence under Section 302 IPC.

2. The trial Court has clarified that the sentences imposed upon A1 shall run concurrently. The remand period is set off under Section 428 Cr.P.C.

3. The case of the prosecution is that the marriage between the deceased and A1 was performed 5 years back from the date of incident and they were blessed with two

children. They used to reside as tenants in the house of PW.5-Rasheeda Begum at Bhavaninagar. They lived happily for sometime. Thereafter, A1 started harassing the deceased stating that she is stout and if she dies he would marry another lady. A2 is the father of A1. A3 and A4 are the sisters of A1. Further case of the prosecution is that, A1 used to harass the deceased with instigation of A2 to A4. While so, on 04.01.2010 at about 1.00 a.m., A1 came to the house in drunken condition, picked up quarrel with her, poured kerosene on her and set fire by bolting the door from inside. When she raised cries, PWs.3 and 4, who are neighbours, broke open the door and they along with A1 shifted the deceased to Osmania General Hospital. On hospital intimation, PW.10-Assistant Sub-Inspector of Police in Bhavaninagar Police Station, went to the hospital and recorded the statement of the deceased, which is marked as Ex.P7. Later, PW.13-Sub-Inspector of Police registered a case under Sections 498-A and 307 IPC and issued FIR. Thereafter, he went to the hospital and recorded the statement of the deceased and also recorded the statements of PW.1 and PW.2. He sent requisition to PW.12-N.Victor Immanuel, VII Additional Chief Metropolitan Magistrate, to record dying declaration. Accordingly, PW.12 recorded dying declaration of the deceased. PW.13-S.I.of Police went to the scene of offence and prepared observation report in the presence of PW.6-Shaik Aslam and other panch witness and

seized MOs.1 to 4 under confession-cum-seizure panchanama. He apprehended A1 and A2, recorded their confessional statements under confession-cum-seizure panchanama in the presence of PW.7-Zaffar Ali Khan and other panch witness. He also referred to A1 to the hospital because he received injuries to the fingers of his both hands at the time of commission of offence and he was treated as an out-patient. Later, after receipt of death intimation, PW.14-Inspector of Police, altered the section of law to 498-A and 302 read with 34 IPC and sent requisition to PW.8-Smt Waheeda Khatoon, Deputy Tahsildar, to conduct inquest over the dead body of the deceased. Accordingly, she conducted inquest over the dead body of the deceased in the presence of PW.5-Smt Rasheeda Begum and other panch witness. PW.9-Dr Shaik Khaja Moinuddin, conducted Post Mortem examination over the dead body of the deceased and issued report stating that the deceased died due to burn injuries. Accordingly, PW.15-Assistant Commissioner of Police took up investigation. After completion of investigation and after receipt of forensic certificate, he laid charge sheet in Crime No.2 of 2010 of Bhavaninagar Police Station, Hyderabad, against the appellants/A1 to A4 for the offence punishable under Sections 498-A and 302 read with 34 IPC.

4. On receipt of charge sheet, learned VIII Additional Chief Metropolitan Magistrate, Hyderabad took cognizance for the offence punishable under sections 498-A and 302 read

with 34 IPC against the appellants/A1 to A4. On appearance of A1 to A4, after furnishing copies of documents and after hearing both sides, the case was committed to the Metropolitan Sessions Judge, Hyderabad, in terms of Section 209 Cr.P.C. Thereafter, the case was assigned to the trial Court.

5. After hearing both sides, charge under Section 498-A read with 34 IPC is framed against the appellants/A1 to A4 and a charge under Section 302 IPC is framed against A1, read over and explained to the appellants/A1 to A4, to which, they denied the allegations and pleaded not guilty.

6. To prove its case, the prosecution has examined PWs.1 to 15, got marked Exs.P1 to P15 and MOs.1 to 4. After closure of prosecution evidence, the appellants/A1 to A4 were examined under Section 313 Cr.P.C. They denied the evidence of prosecution witnesses. On behalf of the appellants/A1 to A4 no witnesses are examined and no documents are marked.

7. After considering the evidence advanced by the prosecution and the material on record and considering the examination of the appellants/A1 to A4 under Section 313 Cr.P.C., the learned trial Court convicted all the appellants/A1 to A4 for the offence punishable under Section 498-A read with 34 IPC, whereas the appellant No.1/A1-

husband of the deceased, also convicted for the offence under Section 302 IPC. Hence, the present appeal.

8. Learned counsel appearing on behalf of the appellants/A1 to A4 submits that the marriage of A1 with Salma i.e., deceased was a second marriage. Since A1 was already married and having children therefore the appellants No.2 to 4/A2 to A4 opposed the marriage with the deceased. However, since A1 was in love with deceased Salma, therefore he performed marriage with the deceased. Thereafter, A1 and the deceased stayed at the house of parents of the deceased and after sometime they shifted in a rented accommodation and till the date of incident they lived in that premises only.

9. Learned counsel submitted that after marriage, they lived separately at Talabkatta area, Hyderabad. Thereafter, till the date of incident, they lived at rented premises of PW.5. Thus learned counsel argued that A1 and the deceased never stayed with A2 and family members. A2 is the father of A1 who was staying separately and A3 and A4 are the sisters of A1 who are married and staying separately with their husbands. Thus they had nothing to do with A1 and deceased. Since A2 to A4 never visited the house of A1 and the deceased therefore the prosecution has falsely implicated A2 to A4 in the present case. He further submitted that PWs.3 and 4 are neighbours of A1 and deceased. They specifically deposed that they did not know A2 to A4. Thus, it

is established that A2 to A4 never visited the house of A1 and deceased as they were staying at Bhavaninagar.

10. Learned counsel for the appellants further argued that the present case rest upon the evidence of PWs.1 and 2 and the dying declaration-Ex.P10, whereby the deceased stated that, on the date of incident, in the morning, at about 2.00 a.m., her husband came to the house and beaten her, poured kerosene on her body and lit the fire. She further stated that her husband strike the fire with the influence of A2-her father-in-law, A3 and A4-sisters of A1 i.e., Sarvar and Munna respectively.

11. Learned counsel further submits that the dying declaration was recorded by PW.12-VII Additional Chief Metropolitan Magistrate. The deceased knew only Urdu language, whereas dying declaration is recorded in Telugu with the help of duty doctor Vijay Kumar. The prosecution has failed to establish that whether Dr Vijay Kumar knew Urdu and could understand whatever stated by the deceased. Thus the dying declaration remained unproved. In the absence of that, no case is made out against the appellants/A1 to A4. However, the learned trial Court has ignored this fact and convicted the appellants/A1 to A4 for the provisions mentioned above.

12. Learned counsel further submits that in regard to appellants/A2 to A4, there are no allegations against them for

the offence punishable under Section 498-A. They did not attend the marriage of A1 and the deceased, and thereafter, never visited their house. Therefore, there was no question of harassing the deceased by A2 to A4. The learned trial Court has ignored this fact and convicted the A2 to A4 for the offence punishable under Section 498-A read with 34 IPC erroneously.

13. As regards conviction of A1, learned counsel for the appellants/A1 to A4, argued that, PWs.3, 4, and 5 specifically deposed that, with their help, A1 broke open the door and found the deceased in burn condition. Thus, at the time of the incident, even A1 was not at home, therefore, how the incident happened, even the prosecution has failed to establish this fact. However, since they failed to investigate on this issue, therefore falsely implicated A1 based upon dying declaration-Ex.P10 recorded by PW.12. He submitted that what the deceased said in the dying declaration, it is not clear, for the reason that, PW.12 was not conversant in Urdu known language of the deceased and the duty doctor Vijay Kumar is also not examined before the Court who could prove that the dying declaration was recorded in his presence and he rightly understood what the deceased narrated to the questions put by PW12. Accordingly, the learned trial Court has ignored all these facts, however, convicted the appellant No.1/A1 for the offence punishable under Section 302 IPC.

14. On the other hand learned Additional Public Prosecutor argued that, to prove the case, the prosecution has examined PWs.1 to 15, got marked Ex.P1 to Ex.P15 and MOs.1 to 4. After closing of prosecution evidence, appellants/A1 to A4 were examined under Section 313 Cr.P.C., but they failed to establish during the trial that they are innocent to the charges tried against them. Moreover the case against the appellants was recorded on the dying declaration-Ex.P10 made by the deceased, which is recorded by PW.12 in the presence of duty Doctor Vijay Kumar. She further submitted that since A2 to A4 did not like marriage of A1 and the deceased therefore they used to instigate A1 to harass the deceased. Accordingly, A1 used to harass her and ultimately poured kerosene oil on her body on the date of incident and strike the fire. Consequently, she succumbed to the burn injuries and died in the hospital. Thus the trial Court has rightly convicted the appellants/A1 to A4 for the offences mentioned above.

15. As the case of the appellants/A1 to A4 are concerned, PW.1, mother of the deceased deposed that, the marriage between A1 and her daughter Salma was performed 5 years before the date of the incident and after marriage they lived separately at Talabkatta area, Hyderabad. Thereafter, they started living along with the parents of A1 situated at Moinbagh, Hyderabad. Appellants/A2 to A4 started harassing her daughter-Salma and they used to beat her, as

they are not interested in the marriage of A1 with Salma. But she admitted that A1 married her daughter Salma on his own accord. She further admitted that A2 to A4 did not attend the marriage of A1 and the deceased. She deposed that the deceased informed her that the appellant No.1/A1 set fire to the deceased by pouring kerosene.

16. In the cross-examination, PW.1 deposed that the deceased Salma was born to her through her first husband. The marriage of A1 and Salma was a love marriage. A2 to A4 are not interested in the marriage. She further admitted that police did not inform her about the cause of burns received by Salma. The doctor and other hospital staff were present at the bed of Salma. She did not enquire the doctor and other hospital staff about the cause of burns received by her daughter. She did not know as to how and who brought her daughter Salma to the hospital after the incident. She further admitted that A1 was present in the hospital at that time.

17. It is pertinent to mention here that PW.1 admitted in her cross-examination that she did not inform to the police that A1 and deceased started living along with A2 to A4 at their house at Moinbagh, Hyderabad. She has also not informed to the police that A2 to A4 started harassing her daughter Salma and they used to beat her as they are not interested the marriage of A1 with Salma.

18. PW.2-Syed Masood is the second husband of PW.1 and father of deceased. He deposed that marriage of A1 and his daughter Salma was performed in the year 2006. The deceased and A1 lived happily for about one year. Thereafter the deceased and A1 started living with the parents of A1. There, A1 used to beat the deceased. A1 used to come to home in drunken condition and used to beat his daughter. He further deposed that the deceased told him that A1 set fire to her by pouring kerosene. In cross-examination, he admitted that A1 and deceased never lived in the house of parents of A1. He denied to the suggestion that all the other accused (A2 to A4) are only with a view to take huge amount from them for the sake of the children of the deceased.

19. From the deposition of PW.2, it is established that A1 and deceased never stayed in the house of A2 to A4. A2 is the father of A1, A3 and A4 are sisters of A1, who are married and staying separately. From the depositions of two witnesses i.e., PWs.1 and 2 mentioned above, reveal that the appellants 2 to 4/A2 to A4 never harassed the deceased. Moreover as per the dying declaration-Ex.P10, kerosene poured and lit the fire by A1. Whereas PW.1 deposed that kerosene poured by all the accused/A1 to A4 and set fire on her. Thus she has exaggerated the incident in fact it is not happened in the manner she deposed.

20. PW.3 and PW.4 are neighbours to the A1 and the deceased. They stated that A1 and the deceased are stayed at Amannagar near Salman Masjid. They specifically deposed that they did not know A2 to A4. Thus it is established that A2 to A4 never visited the house of A1 and the deceased. Thus there was no question to harass the deceased by A2 to A4.

21. PW.5-Smt Rasheeda Begum is the landlady of the premises wherein A1 and the deceased were staying at the time of offence. She specifically stated that she did not know A2 to A4. Thus, from her deposition also, it is established that A2 to A4 never visited the house of A1 and the deceased. Hence, the case against A2 to A4 has not been proved by the prosecution beyond reasonable doubt.

22. Moreover, in the dying declaration-Ex.P10, the deceased only stated that A1 poured kerosene and lit the fire on her under the influence of A2 to A4. In the dying declaration nowhere she stated that at any point of time she lived with A2 to A4 or they used to come to their house and harassed the deceased. Accordingly, from the above evidence, it is specifically established that there was no role played by A2 to A4 in harassing the deceased and instigating A1 to pour kerosene and lit the fire upon the deceased.

23. In view of the above discussion, we are of the opinion that the learned trial Court has ignored this fact and

erroneously convicted A2 to A4 for the offence punishable under Section 498-A read with 34 IPC. Consequently, we hereby set aside the order of the conviction and sentence for the offence punishable under section 498-A IPC read with 34 IPC.

24. As regards the case of A1 i.e., husband of the deceased is concerned, PWs.1 and 2-the mother and father of the deceased respectively, stated that, A1 used to harass the deceased. It is also admitted that marriage of A1 and the deceased was second marriage and a love marriage between them. In addition to above, in the dying declaration-Ex.P10, who is wife of A1 has deposed that her husband A1 came to the house in the morning time at about 2.00 a.m., beaten her and poured kerosene on her body and strike the fire. Here, it is important to note that the deceased has two minor children and marriage with A1 is a love marriage. Had A1 not poured kerosene and lit the fire upon deceased, there was no occasion for the deceased that she would name her husband in the offence.

25. As argued by the learned counsel for the appellants that the dying declaration was recorded with the help of duty doctor Vijay Kuamr as the deceased was not conversant with Telugu however above named doctor narrated the incident in Telugu. Since PW.12 did not know Urdu therefore he took the

help of duty doctor Vijay Kumar and recorded the statement of the deceased.

26. Learned counsel for the appellants has argued that the appellant No.1/A1 is an auto driver came late at home and with the help of PWs.3, 4 and 5 opened the door and found the deceased in burn condition, thereafter he took the deceased to the hospital and got admitted there. The presence of A1 is admitted even by PW.1. Thus, A1 has falsely implicated in this case and erroneously convicted by the trial Court.

27. On perusal of deposition of PW.1 who specifically stated that the deceased told her that A1 poured kerosene and lit the fire. In the cross-examination, neither this fact has been denied nor did any suggestion put to PW.1 that he was not available at house at the time of incident and not poured kerosene and lit the fire. However with the help of PWs.3 to 5 they opened the door and recovered the deceased in a burnt condition and thereafter admitted in the hospital. But in the 313 Cr.P.C. statement A1 has not taken the plea of *alibi* that he was not at home and came late and found the deceased in a burn condition, thereafter, got admitted in the hospital. Taking such plea in the appeal, is not helpful to the appellant No.1/ A1 especially he has not examined any witness regarding that he was not at home at the time of incident.

28. PWs.3 and 4 are neighbours. They deposed that in the mid night on hearing the voice from the house of A1, they went to their house and broke up door and saw the deceased with burn injuries and shifted her to Osmania General Hospital. But they did not know how she received injuries.

29. PW.5 is the house owner deposed that A1 and deceased used to reside in her house as tenants. She also shown as panch witness for inquest but she deposed that the police have not conducted inquest over the dead body of the deceased.

30. PW.6 is one of the panch witnesses for observation-cum-seizure panchanam. He deposed that the police prepared observation report at the scene of offence in his presence and seized kerosene tin, burnt match sticks, half burnt cloth and broken bangle pieces which are marked as MOs.1 to 4 respectively. He also deposed that the police prepared observation-cum-seizure panchanama which is marked as Ex.P3 in his presence.

31. PW.7 is panch witness for confession of A1 and A2. However he has not supported the case of prosecution. Thus, declared as hostile.

32. PW.8 is the Tahsildar. She deposed that on 06.01.2010, on the requisition given by the police, Bhavaninagar Police Station, she conducted inquest

panchanama-Ex.P5 over the dead body of the deceased at Osmania General Hospital mortuary in the presence of PW.5 and other panch witness.

33. PW.9 is the Doctor. He deposed that on the requisition given by PW.8, he conducted post-mortem examination over the dead body of the deceased and issued report, which is marked as Ex.P6. He opined that the deceased died due to burn injuries.

34. PW.10 is the Assistant Sub-Inspector of Police in Bhavaninagar Police Station. On 04.01.2010, on receipt of intimation from Osmania General Hospital, he went to burns ward, and recorded the statement of the deceased, at about 6.30 a.m.

35. PW.11 is the photographer. He deposed that at the instance of the police he took photographs at the scene of offence which are marked as Ex.P8.

36. PW.12 is the VII Additional Chief Metropolitan Magistrate who recorded dying declaration of the deceased deposed that on receipt of requisition from the police he went to Osmania General Hospital and recorded dying declaration of the deceased, which is marked as Ex.P10.

37. PW.13 is the Sub Inspector of Police in Bhavaninagar Police Station. He deposed that basing on Ex.P7, he registered a case and issued FIR. Later he went to

Osmania General Hospital and recorded the statement of the deceased. He sent requisition to the Magistrate to record dying declaration of the deceased. Later, he went to the scene of offence, prepared observation report, and seized MOs.1 to 4 under confession-cum-seizure panchanama in the presence of PW.6 and other panch witness. He also deposed that he apprehended A1 and A2 and recorded their confessional statements and seized the pant of A1 which contained burn marks. Thereafter he referred to A1 to the Osmania General Hospital because he also received injuries on the fingers of his both hands at the time of commission of offence. Through him, out-patient slip relating to A1, is marked as Ex.P14.

38. From the aforesaid depositions, it reveals that, A1 contained burn marks who received injuries on the fingers of his hands at the time of commission of offence. Though it is argued by the learned counsel for the appellants that he tried to save the deceased due to which he received burn injuries to the fingers of his both hands. Whereas, pursuant to confessional statement half burn pant of the A1 is recovered which connect the statement of the deceased that she caught A1 at the time of offence due to which he received burn injury and his pant also burnt. Thus it is established that at the time of offence, A1 was present at his house.

39. It is elicited from the statement of PWs.1 and 2 and the statement of the deceased recorded by the Sub Inspector

of Police that A1 used to come to the house in drunken condition, picked up quarrel, poured kerosene on the deceased, and set fire, and the deceased received injuries.

40. Ex.P7 is the statement of the deceased recorded by PW.10-Sub-Inspector of Police on 04.01.2010 at 6.00 a.m. Ex.P10 is dying declaration of the deceased recorded by PW.12 on 04.01.2010 at about 8.30 a.m. In Ex.P7 the deceased gave statement that A1 used to harass her and at about 1.00 a.m. A1 came to the house in drunken condition, picked up quarrel, poured kerosene on her and set fire. This fact is corroborated in Ex.P10 dying declaration recorded by PW.12, wherein, she stated that her husband came in drunken condition at about 2.00 a.m. beat her, poured kerosene on her and set fire.

41. It is not the case of the appellants that the deceased was not in a fit condition to give statement at the time of recording her statement. As per Ex.P9-Requisition, the percentage of burn injury is 80% - 90%. Moreover, the doctor endorsed on the dying declaration that the deceased was conscious and in fit state of mind to give statement. In addition, in Ex.P7, the deceased stated that she caught hold the legs of her husband and not allowed to move when he poured kerosene on her and set fire and when flames were coming. Accordingly in the said process A1 also received injuries on both of his hands.

42. In addition to above, PW.13 who was Inspector of Police deposed that he went to the scene of offence and seized incriminating material which are marked as MOs.1 to 4 under confession-cum-seizure panchanama under Ex.P3 in the presence of PW.6 and other panch witness. PW.6 is one of the panch witness also deposed the same. As per the evidence of PW.6, seizure of MOs.1 to 4 at the scene of offence is also proved.

43. The offence is around 1.00 and 2.00 a.m. in the early morning. A1 i.e., the husband of the deceased, supposed to be at his house, had the deceased received injury otherwise, when she was on the death bed and when her minor children are behind, there was no occasion for her to name A1 that he poured kerosene and lit the fire on her.

44. PWs.3 and 4 have not supported the case of the prosecution however they submitted that with the help of A1 they opened the door and recovered the deceased. But, by this plea, we believe that they tried to save A1. But, the fact remains that the aforesaid witnesses have not received any injury whereas A1 received injury on the fingers of his both hands and also his half burn pant recovered by the police. Thus, it is established that A1 has poured kerosene on the body of the deceased and lit the fire due to which she succumbed to the injuries. Dying declaration has been recorded by PW.12, III Additional Chief Metropolitan

Magistrate, who firstly put question to the deceased and after his satisfaction that the deceased was fit for the statement thereafter, he recorded the dying declaration.

45. In view of the above discussion, we find no merit in the case of Appellant No.1/A1. Accordingly, we hereby confirm the conviction and sentence awarded by the trial Court against him.

46. Regarding appellants No.2 to 4/A2 to A4 are concerned, they are discharged from their charges and accordingly acquitted. Personal and surety bonds are cancelled.

47. Accordingly, the Criminal Appeal is partly allowed. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

T. AMARNATH GOUD, J.

Date: 06 -09-2018

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